U.S. DEPARTMENT OF COMMERCE
National Technical Information Service
PB-290 260

Air Pollution Regulations in State Implementation Plans: Hawaii

Abcor Inc, Wilmington, MA Walden Div

Prepared for

Environmental Protection Agency, Research Triangle Park, NC

Aug 78

PB 290260

United States
Environmental Protection
Agency

Office of Air Quality
Planning and Standards
Research Triangle Park NC 27711

EPA-450/3-78-061
August 1978

Air

EPA

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INFORMATION SERVICE
U. S. DEPARTMENT OF COMMERCE
SPRINGFIELD, VA. 22161

62

TECHNICAL REPORT DATA
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1. REPORT NO. EPA-450/3-78-061	2.
3. RECIPIENT'S ACCESSION NO. PB 290 260	
4. TITLE AND SUBTITLE Air Pollution Regulations in State Implementation Plans: Hawaii	5. REPORT DATE August 1978
	6. PERFORMING ORGANIZATION CODE
7. AUTHOR(S)	8. PERFORMING ORGANIZATION REPORT NO.
9. PERFORMING ORGANIZATION NAME AND ADDRESS Walden Division of Abcor, Inc. Wilmington, Mass.	10. PROGRAM ELEMENT NO.
	11. CONTRACT/GRANT NO. 68-02-2890
12. SPONSORING AGENCY NAME AND ADDRESS Control Programs Development Division Office of Air Quality Planning and Standards Office of Air, Noise, and Radiation Research Triangle Park, NC 27711	13. TYPE OF REPORT AND PERIOD COVERED
	14. SPONSORING AGENCY CODE

15. SUPPLEMENTARY NOTES
EPA Project Officer: Bob Schell, Control Programs Development Division

16. ABSTRACT
This document has been produced in compliance with Section 110(h)(1) of the Clean Air Act amendments of 1977. The Federally enforceable regulations contained in the State Implementation Plans (SIPs) have been compiled for all 56 States and territories (with the exception of the Northern Mariana Islands). They consist of both the Federally approved State and/or local air quality regulations as indicated in the Federal Register and the Federally promulgated regulations for the State, as indicated in the Federal Register. Regulations which fall into one of the above categories as of January 1, 1978, have been incorporated. As mandated by Congress, this document will be updated annually. State and/or local air quality regulations which have not been Federally approved as of January 1, 1978, are not included here; omission of these regulations from this document in no way affects the ability of the respective Federal, State, or local agencies to enforce such regulations.

17. KEY WORDS AND DOCUMENT ANALYSIS

a. DESCRIPTORS	b. IDENTIFIERS/OPEN ENDED TERMS	c. COSATI Field/Group
Air pollution Federal Regulations Pollution State Implementation Plans		

18. DISTRIBUTION STATEMENT RELEASE UNLIMITED	19. SECURITY CLASS *(This Report)* Unclassified	
	20. SECURITY CLASS *(This page)* Unclassified	22. PRICE PC A04 / MF A01

EPA Form 2220-1 (9-73)

EPA-450/3-78-061

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Hawaii

by

Walden Division of Abcor, Inc.
Wilmington, Massachusetts

Contract No. 68-02-2890

EPA Project Officer: Bob Schell

Prepared for

U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Air, Noise, and Radiation
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

August 1978

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Publication No. EPA-450/3-78-061

INTRODUCTION

This document has been produced in compliance with Section 110(h)(1) of the Clean Air Act Amendments of 1977. The Federally enforceable regulations contained in the State Implementation Plans (SIPs) have been compiled for all 56 States and territories (with the exception of the Northern Mariana Islands). They consist of both the Federally approved State and/or local air quality regulations as indicated in the Federal Register and the Federally promulgated regulations for the State, as indicated in the Federal Register. Regulations which fall into one of the above categories as of January 1, 1978, have been incorporated. As mandated by Congress, this document will be updated annually. State and/or local air quality regulations which have not been Federally approved as of January 1, 1978, are not included here; omission of these regulations from this document in no way affects the ability of the respective Federal, State, or local agencies to enforce such regulations.

There have been recent changes in the Federal enforceability of parking management regulations and indirect source regulations. The October, 1977, appropriation bill for EPA prohibited Federal enforcement of parking management regulations in the absence of specific Federal authorizing legislation. Federally promulgated parking management regulations have, therefore, been suspended indefinitely. Pursuant to the 1977 Clean Air Act Amendments, indirect source regulations may not be required for the approval of a given SIP. Consequently, any State adopted indirect source regulations may be suspended or revoked; State adopted indirect source regulations contained in an applicable SIP are Federally enforceable. More importantly, EPA may only promulgate indirect source review regulations which are specific to Federally funded, operated, or owned facilities or projects. Therefore, the Federally promulgated indirect source regulations appearing in this document are not enforceable by EPA except as they relate to Federal facilities.

Since State air quality regulations vary widely in their organization, content, and language, a standardized subject index is utilized in this document. Index listings consist of both contaminant and activity oriented categories to facilitate usage. For example, for regulations which apply to copper smelters, one might look under sulfur compounds (50.2), particulate matter process weight (50.1.1), or copper smelters (51.15). Federal regulations pertaining to a given State immediately follow the approved State and local regulations.

Additionally, a summary sheet of the information included in each comprehensive document is presented prior to the regulatory text to allow one to quickly assess the contents of the document. Specifically, the summary sheets contain the date of submittal to EPA of each revision

to the SIP and the date of the Federal Register in which the revision was either approved or disapproved by EPA. Finally, a brief description or reference of the regulation which was submitted is also included.

This document is not intended to provide a tool for determining the enforceability of any given regulation. As stated above, it is intended to provide a comprehensive compilation of those regulations which are incorporated directly or by reference into Title 40, Part 52, of the Code of Federal Regulations. Consequently, the exclusion of a Federally approved regulation from this document does not diminish the enforceability of the regulation. Similarly, the inclusion of a given regulation (for example, regulations governing pollutants, such as odors, for which there is no national ambient air quality standards) in this document does not, in itself, render the regulation enforceable.

SUMMARY SHEET

EPA-APPROVED REGULATION CHANGES

HAWAII

Submittal Date	Approval Date	Description
11/21/72	5/14/73	Sec. 3, 6, 12, 20, 21, 22
5/15/73	6/25/74	Sec. 7c (Agricultural Burning)

FEDERAL REGULATIONS

Section No.	Description
52.624	Public availability of emission data
52.629	Review of new or modified indirect sources
52.632	Prevention of significant deterioration

DOCUMENTATION OF CURRENT EPA-APPROVED
STATE AIR POLLUTION REGULATIONS

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12.0 MOTOR VEHICLE EMISSIONS AND CONTROLS

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51.6 FUEL BURNING EQUIPMENT (coal, natural gas, oil) - SO_2 (includes Fuel Content and Other Related Topics)

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PUBLIC HEALTH REGULATIONS
DEPARTMENT OF HEALTH, STATE OF HAWAII
Chapter 43
AIR POLLUTION CONTROL

(1.0) Under and by virtue of the provisions of Section 322-62, Hawaii Revised Statutes, and all other applicable laws, the following regulations relating to air pollution control are hereby adopted:

SECTION 1. DEFINITIONS:

(a) "Air pollutant" shall mean dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(b) "Air pollution" shall mean the presence in the outdoor atmosphere of one or more air pollutants in such quantities and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property or interferes with the enjoyment of life or property.

(c) "Agricultural burning" shall mean open outdoor fires used in agricultural operations, in the growing of crops or raising of fowls or animals, forest management or range improvement.

(d) "Ambient air" shall mean the general outdoor atmosphere.

(e) "Department" shall mean the Department of Health of the State of Hawaii or its duly authorized agent, officer, or inspector.

(f) "Director" shall mean the Director of Health.

(g) "Effluent water separator" shall mean any tank, box, sump, or other container in which any volatile organic compound floating on or entrained or contained in water entering such tank, box, sump, or other container is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

(h) "Emission" shall mean the act of releasing or discharging air pollutants into the ambient air from any source.

(i) "Existing source" shall mean any stationary source other than a new source.

(j) "Fuel-burning equipment" shall mean any furnace, boiler, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer.

(k) "Fugitive dust" shall mean uncontrolled emission of solid airborne particulate matter from any source other than combustion.

(l) "Modification" shall mean any physical change to or change in the method of operation of a stationary source which changes the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(m) "New source" shall mean any stationary source, the construction or modification of which is commenced after adoption of any applicable regulation.

(n) "Odors" shall mean smells or aromas which are unpleasant to persons, or which interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or create symptoms of nausea, or which by their inherent chemical or physical nature, or method of processing, are or may be detrimental or dangerous to health.

(o) "Opacity" shall mean a state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view.

(p) "Open burning" shall mean the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack or flare.

(q) "Particulate matter" shall mean any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

(r) "Person" shall mean any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, any other State or political subdivision or agency thereof or any legal successor, representative, agency of the foregoing.

(s) "Ringelmann Chart" shall mean the chart published and described in the U.S. Bureau of Mines Information Circular 8333.

(t) "Smoke" shall mean the gaseous products of burning carbonaceous materials made visible by the presence of small particles of carbon.

(u) "Soiling index" shall mean a measure of the soiling properties of suspended particles in air determined by drawing a measured volume of air through a known area of Whatman No. 4 filter paper for a measured period of time, expressed as COH's/1,000 linear feet, or equivalent.

(v) "Source" shall mean any property, real or personal, which emits or may emit any air pollutant.

(w) "Stack" shall mean any chimney, flue, conduit, or duct arranged to conduct emissions to the ambient air.

(x) "Standard stack conditions" shall mean a dry gas temperature of 70° Fahrenheit and a gas pressure of 14.7 pounds per square inch absolute (21.1°C, 760 mm Hg.).

(y) "Submerged fill pipe" shall mean any fill pipe the discharge opening of which is entirely submerged when the liquid level is 6 inches (15 cm.) above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean any fill pipe the discharge opening of which is entirely submerged when the liquid level is 18 inches (45 cm.) above the bottom of the tank.

(z) "Volatile organic compounds" shall mean any gasoline, petroleum, or any petroleum distillate containing carbon and hydrogen or carbon and hydrogen in combination with any other element which has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions.

(3.0) SECTION 2. PERMIT AND REGISTRATION SYSTEM:

(a) Permit System

(1) Permits Required

(a) Authority to Construct. No person shall cause or permit the construction or modification of any new source, the use of which may cause the issuance of air pollutants or the use of which may eliminate, reduce, or control the issuance of air pollutants without first obtaining authorization for such construction or modification from the Director. The authorization is for construction or modification only and shall remain in effect unitl the Permit to Operate is granted or denied.

(b) Permit to Operate. No person shall cause or permit the operation of any new source without first obtaining a Permit to Operate from the Director. Authorization to continue operating any new source shall continue only as long as the Permit to Operate is in effect.

(2) List of Exemptions

An Authority to Construct or Permit to Operate shall not be required for the following:

(a) The installation or altering of an air pollutant detector, air pollutant recorder, combustion controller or combustion shutoff.

(b) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from equipment.

(c) Fuel burning equipment, other than smoke house generators, which is used in a private dwelling; or has a BTU gross input rate of less than 500,000 BTU per hour; or is used for space heating, other than boilers and hot air furnaces.

(d) Steam generators, steam superheaters, water boilers, water heaters, and closed heat transfer systems that have a maximum gross heat input rate of less than 250 million BTU per hour. and are fires exclusively with one of the following:

1) natural or synthetic gas
2) liquified petroleum gas
3) a combination of natural, synthetic, and/or liquified petroleum gas

(e) Mobile internal combustion engines.

(f) Laboratory equipment used exclusively for chemical or physical analyses.

(g) Ocean-going vessels.

(h) Other sources of minor significance as specified by the Director.

(3) Violators Not Exempt

Issuance of a Permit to Operate shall not exempt any person owning or operating a source from prosecution for violations of applicable rules and regulations.

(4) Applications

(a) Application for Authority to Construct and Permit to Operate as required by Section 2(a) (1) shall be made by the applicant on forms furnished by the Director and shall be accompanied by two copies of complete data, siting information, plan descriptions, specifications, drawings, and other detailed information necessary to determine in what manner the new source will be operated and controlled.

(b) Each application shall be signed by the applicant and shall constitute an agreement that the applicant will assume responsibility for the construction or modification and operation of the equipment in accordance with these rules and regulations.

(c) If the applicant is a partnership or group other than a corporation, the application shall be made by one individual who is a member of the group. If the applicant is a corporation, the application shall be made by an officer of the corporation or general manager of a facility.

(5) Conditions for Considering Applications

(a) Approval. The Director shall approve an application for Authority to Construct or Permit to Operate if the applicant can show to the satisfaction of the Director that:

1) The new source is designed, built, and equipped in accordance with the best practicable control technology so as to reduce emissions to a minimum.

2) The new source is designed and will be constructed or modified to operate without causing a violation of applicable rules and regulations.

3) The new source will not endanger the maintenance or attainment of applicable ambient air quality standards.

(b) Conditional Approval. Before granting an approval for Authority to Construct or Permit to Operate, the Director may:

1) Require the applicant to provide such facilities as are necessary for sampling and testing to determine the air pollutants discharged into the atmosphere. These sampling and testing facilities may consist of the following:

a) sampling ports of a size, number and location as specified by the Director
b) safe access to each port
c) instrumentation for monitoring and recording emission data

2) Specify conditions which will bring the operation of any new source described in the application within the conditions of Section 2(a) 5(a) of this Rule.

(c) Denial.

1) In acting upon an application for Authority to Construct or Permit to Operate, the Director may deny an application if the information submitted shows that the new source described in the application cannot conditionally or otherwise meet the conditions of Section 2(a) 5(a).

2) In acting upon an application for a Permit to Operate, if the Director finds that the new source has been constructed not in accordance with the Authority to Construct, he shall deny the applicant the Permit to Operate.

(6) Action on Application

(a) The Director may request additional information from the applicant.

(b) The Director shall act within a reasonable time, but not to exceed 90 days, on an application and shall notify the applicant in writing of his approval, conditional approval, or denial of the application.

(c) If an application is conditionally approved or denied, the Director shall set forth his reasons for conditional approval or denial in the written notice to the applicant.

(d) The applicant may submit answers and comments, in duplicate, to the Director's response to the application.

(e) The Director will consider the applicant's answers and comments and shall notify the applicant in writing of his final approval or denial of the application.

(f) If the Director issues to the applicant a conditional approval of the application, commencing work under such an authority to construct or operating under such a permit to operate shall be deemed acceptance by the applicant of all the conditions so specified.

(g) If the Director issues to the applicant a final denial of the application, the Director shall not give further consideration until a new application is submitted by the applicant.

(7) Performance Testing

If required by the Director, the applicant shall conduct performance tests in order to determine compliance with applicable rules and regulations in accordance with test methods as specified by the Director with the tests being made at the expense of the applicant. The Director may monitor or conduct such tests.

(8) Cancellation of Authority to Construct

(a) The Director may cancel an Authority to Construct if the construction or modification is not begun within one year from the date of issuance, or if the work involved in the construction or modification is suspended for one year or more.

(b) An applicant may request an extension of the cancellation date by writing to the Director and stating reasons for the request. Extensions may be granted for a period of not

more than six months after the cancellation date.

(9) Suspension or Revocation of Permit to Operate

Any violations of these Rules and Regulations shall be cause for the Director to suspend or revoke a Permit to Operate. Suspension or revocation of a Permit to Operate shall become final 10 days after service of notice on the holder of the permit. A Permit to Operate which has been revoked shall be surrendered forthwith to the Director and all fees paid or dues shall be forfeited.

(10) Transfer of Permit to Operate

A Permit to Operate shall not be transferrable, whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

(11) Reporting Discontinuance or Dismantlement

It shall be required of that person to which the Permit to Operate was issued to report to the Director within thirty days the permanent discontinuance or dismantlement of that article, machine, equipment, or other contrivance for which the Permit to Operate had been issued. The Permit to Operate shall then be surrendered forthwith to the Director.

(12) Posting of Permit to Operate

Upon granting an approval for a Permit to Operate, the Director shall issue to the applicant a certificate referred to as Permit to Operate which shall be posted in a conspicuous place at or near the article, machine, equipment or other contrivance for which the permit was issued.

(13) Falsifying or Altering Permit to Operate

A person shall not willfully deface, alter, forge, counterfeit, or falsify a Permit to Operate.

(14) Fees

(a) Filing Fee. Every applicant for an Authority to Construct and a Permit to Operate shall pay a filing fee of $20. This filing fee shall be submitted with the application and shall not be refunded nor applied to any subsequent application following final action of cancellation or denial of an application.

(b) Permit to Operate.

1) Every applicant who files an application with the Director for a Permit to Operate shall pay, in addition to the filing fee, an amount prescribed by the applicable fee schedule. If more than one fee schedule is applicable, then the governing schedule shall be that which results in the higher prescribed fee.

2) Where an application is filed for a permit to operate any new source by reason of an alteration or addition and where a Permit to Operate had previously been granted for such equipment, the applicant shall be assessed a fee based upon the increase in rating using the applicable fee schedule. Where there is a decrease in such rating, the applicant shall pay only the amount of the filing fee.

3) Where an application is filed for a Permit to Operate by reason of transfer from one person to another, and no alteration, addition, or transfer of location has been made, the applicant shall pay only a $5.00 fee which shall be submitted with the application.

4) Where the application is filed for a Permit to Operate by reason of transfer from one location to another permanent location, and no alteration, addition, or transfer of person has been made, the applicant shall pay only a $20.00 filing fee which shall be submitted with the application.

5) A request for a duplicate Permit to Operate shall be made in writing to the Director within 10 days after the destruction, loss, or defacement of a Permit to Operate. A fee of $1.00 shall be charged and submitted with the request.

(c) Exemptions. Any federal, state, or county government agency shall be exempt from paying all fees as prescribed herein.

(d) Payment of Fees.

1) Except where noted, all fees as prescribed herein are payable within 30 days after issuance of notice by the Director of approval or conditional approval of an application for a Permit to Operate. Nonpayment of the fee within this period shall result

in automatic cancellation of the application.

2) Fees shall be made payable to the State of Hawaii.

(15) Fee Schedule

(a) Electric Motor Horsepower Schedule. Any new source where an electric motor is used as the power supply shall be assessed a permit fee based on the total rated motor horsepower of all electric motors included in the new source, in accordance with the following schedule:

Horsepower	Fee
1) up to and including 10	$20.00
2) greater than 10 but less than 100	30.00
3) equal to or greater than 100	40.00

(b) Electric Energy Schedule. Any new source which uses electrical energy, with the exception of electric motors, shall be assessed a permit fee based on the total kilovolt ampere (KVA) ratings, in accordance with the following schedule:

Kilovolt Ampere	Fee
1) up to and including 100	$20.00
2) greater than 100 but less than 5,000	30.00
3) equal to or greater than 5,000	40.00

(c) Fuel Burning Equipment Schedule. Any new source in which fuel is burned, with the exception of incinerators, shall be assessed a permit fee based upon the design fuel consumption expressed in thousands of BTU per hour, using gross heating values of the fuel, in accordance with the following schedule:

1,000 BTU Per Hour	Fee
1) up to and including 500	$20.00
2) greater than 500 but less than 2,000	30.00
3) equal to or greater than 2,000	40.00

(d) Incinerator Schedule. Any new incinerator source shall be assessed a permit fee based upon the maximum horizontal cross sectional area, in square feet, of the primary combustion chamber, in accordance with the following schedule:

Area/Square Feet	Fee
1) up to and including 10	$20.00
2) greater than 10 but less than 20	30.00
3) equal to or greater than 20	40.00

(e) Stationary Container Schedule. Any new stationary tank, reservoir, or other container source shall be assessed a permit fee based on the capacity in gallons, in accordance with the following schedule:

Gallons	Fee
1) up to and including 40,000	$20.00
2) greater than 40,000 but less than 400,000	$30.00
3) equal to or greater than 400,000	40.00

(f) Miscellaneous Schedule. Any new source which is not included in the preceding schedules shall be assessed a fee of $20.00 for each permit granted.

(b) Registration of Existing Sources

(1) Registration Required

All persons responsible for the operation of existing sources, the use of which may cause the issuance of air pollutants or the use of which may eliminate, reduce, or control the issuance of air pollutants, shall be required to register with the Director within six (6) months of the effective date of this Regulation. Existing sources in the City and County of Honolulu and the County of Maui that are not required to re-register the equipment.

(2) List of Exemptions

Registration shall not be required for the following:

(a) An air pollutant detector, air pollutant recorder, combustion controller, or combustion shutoff.

(b) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from equipment.

(c) Fuel burning equipment, other than smoke house generators, which is used in a private dwelling; or has a BTU gross input rate of less than 500,000 BTU per hour; or is used for space heating, other than boilers and hot air furnaces.

(d) Steam generators, steam superheaters, water boilers, water beaters, and closed heat transfer systems that have a maximum gross heat input rate of less than 250 million BTU per hour, and are fired exclusively with one of the following:

1) natural or synthetic gas
2) liquified petroleum gas
3) a combination of natural, synthetic, and/or liquified petroleum gas

(e) Mobile internal combustion engines.

(f) Laboratory equipment used exclusively for chemical or physical analyses.

(g) Ocean-going vessels.

(h) Other sources of minor significance as specified by the Director.

(3) Registration Forms

Registration shall be made on forms provided for this purpose by the Director and shall include such information as may be necessary to enable the Director to evaluate the nature and extend of emissions.

(4) Registration Fees

A fee of $10.00 shall be assessed for each stack, chimney, or stationary container.

(5) Violators Not Exempt

Registration shall not exempt any person owning or operating a source from prosecution for violation of applicable rules and regulations.

(9.0) SECTION 3. SAMPLING, TESTING, AND REPORTING METHODS

(a) All sampling and testing shall be made and the results calculated in accordance with test procedures approved by the Department. All tests shall be made under the direction of persons knowledgeable in the field of air pollution control.

(b) The Department may conduct tests of emissions of air pollutants from any source. Upon request of the Department, the person responsible for the source to be tested shall provide necessary ports in stacks or ducts and such other safe and proper sampling and testing facilities,

(c) (1) The owner or operator of any stationary source in the State of Hawaii shall, upon notification from the Department, maintain records of the nature and amounts of emissions from such source and/or any other information as may be deemed necessary by the Department to determine whether such source is in compliance with applicable emissions limitations or other requirements.

(2) The information recorded shall be summarized and reported to the Department, on forms furnished by the Department, and shall be submitted within 45 days after the end of the reporting period. Reporting periods are January 1 - June 30; and July 1 - December 31; except that the initial reporting period shall commence on the date the Department issues notification of the record-keeping requirements.

(3) Information recorded by the owner or operator and copies of the summarizing reports submitted to the Department shall be retained by the owner or operator for two years after the date of which the pertinent report is submitted.

(4) Emission data obtained from owners or operators of stationary sources pursuant to Section 22, Act 100, Session Laws of Hawaii, 1972, will be correlated with applicable emission limitations and other requirements and will be made available to the public during normal business hours at the Department of Health.

(7.0) SECTION 4. MALFUNCTION OF EQUIPMENT REPORTING:

(a) In the case of shutdown of air pollution control equipment for necessary schedules maintenance, the intent to shut down such equipment shall be reported to the Department at least twenty-four (24) hours prior to the planned shutdown. Such prior notice shall include, but is not limited to, the following:

(1) Identification of the specific facility to be taken out of service as well as its location and permit number.

(2) The expected length of time that the air pollution control equipment will be out of service.

(3) The nature and quantity of emissions of air pollutants likely to be emitted during the shutdown period.

(4) Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period.

(5) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(b) In the event that any emission source, air pollution control equipment, or related facility breaks down in such a manner as to cause the emission of air pollutants in violation of applicable rules and regulations, the person responsible for such equipment shall immediately notify the Department of such failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The Department shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

(2.0) SECTION 5. PROHIBITION OF AIR POLLUTION:

No person shall permit or cause air pollution as defined in Section 1 (b) of this part.

(6.0) SECTION 6. COMPLIANCE SCHEDULE:

(a) All existing sources not in compliance with applicable rules and regulations on the date of adoption of such rules and regulations shall be in compliance on the date specified in these regulations unless the owner or person responsible for the operation of the source shall have received a compliance order which extends the date such source must be in compliance with applicable rules and regulations.

(b) A compliance order may not be issued unless the owner or person responsible for the operation of the source shall have submitted to and have approved by the Department a control plan and schedule for achieving compliance which specify the date on or before which compliance will be obtained and such other information as the Department may require. Any such submittal shall be on forms provided by the Department and must be submitted prior to December 31, 1972. Any control plan or schedule submitted after December 31, 1972, shall not be considered or approved.

(c) Any such control plan and schedule may be approved only if the applicant shows and the Department determines that such an approval is in the public interest.

(d) If the Department approved of such control plan and schedule, it shall specify the date on which the owner or person responsible for the source shall cause such source to be in compliance with applicable rules and regulations but in no case shall any order specify a date later than July 31, 1975, if such order will prevent or interfere with the attainment of a National Ambient Air Quality Standard.

(e) The Department shall require persons submitting such a plan to provide for periodic increments of progress towards compliance. The dates for achievement of such increments shall be specified. Increments of progress shall include, but not be limited to: letting of necessary contracts for construction or process changes, if applicable; initiation of construction; completion and start up of control systems;

performance tests; and submittal of performance test analysis and results.

(f) The Department may modify or revoke any such compliance order if it determines that such modification or revocation is in the public interest.

(g) For the purposes of this section, compliance order means an order by the Department to an owner or person responsible for the operation of an existing source specifying the date on which such person must comply with applicable rules and regulations.

(51.13) SECTION 7. CONTROL OF OPEN BURNING:

(a) Except as provided in Section 7 (b) and (c) of this regulation, upon adoption of these regulations, no person shall ignite, cause to be ignited, permit to be ignited, or maintain any open fire.

(b) Section 7 (a) shall not apply to:

(1) Open fires for the cooking of food.

(2) Fires for recreational, decorative, or ceremonial purposes.

(3) Fires to abate a fire hazard, providing hazard is so declared by the fire department or District Forester having jurisdiction.

(4) Fires for prevention or control of disease or pests.

(5) Fires for training personnel in the methods of fighting fires in compliance with Section 8(a).

(6) Fires for the disposal of dangerous materials, where there is no alternate method of disposal and burning is approved in advance by the Department.

(7) Fires for the burning of leaves, grass, weeds, wood, paper and similar materials on ones own premises, not exceeding four family units and 25 pounds per day, per unit, provided such burning is not within 50 feet of any habitable building, is attended or supervised by an adult person and is completed within daylight hours (9 a.m. to 6 p.m.) and provided further that such burning shall not be in violation of the regulations of other fire control agencies. This exception shall not apply to the City and County of Honolulu after June 1, 1973.

(8) Fires for residential bathing purposes.

(c) Agricultural Burning:

(1) Permit Required:

No person shall cause or permit agricultural burning unless a

permit has been applied for and obtained from the Department, provided that this permit is valid only if the conditions specified in the permit are complied with, that the permit is not valid on "no-burn" days and provided further that no permit shall be granted for the open burning of trash and other wastes that have been handled or processed by factory operations.

(2) Applications:

(aa) Applications shall be made on forms specified by the Department and shall be accompanied by two copies of complete data which will include maps of areas to be burned showing fields by appropriate numbers and acreage, direction of prevailing winds, location of residential, school, commercial establishments, public buildings, and airports, the designation of fields to be burned under specified wind conditions and alternate means of disposal of crops and any other information that the Department may specify.

(bb) Each application shall be signed by the applicant and shall constitute an agreement that the applicant will assume responsibility for the open agricultural burning in accordance with these rules and regulations.

(3) "No-burn" Days:

(aa) Agricultural burning shall be prohibited under the following conditions:

(1) On any island when meteorological conditions have resulted in wide-spread haze on that island, and where the National Weather Service predicts a continuation or deterioration of existing meteorological conditions for the next 24 hours. For the purposes of this section, widespread haze shall be considered to exist when all visible ridges within 5 to 10 miles have a "smoky" or bluish appearance and colors are subdued. Ridges beyond 10 miles that are visible have a blurred appearance.

(2) On the island of Oahu either when the condition specified in the immediately preceding subsection (Section 7(c)(3)(aa)(1)) occur or when meteorological conditions have resulted in a rise of carbon monoxide level exceeding 5 mg/m^3 for an 8-hour average or particulate matter level exceeding 100 ug/m^3 for 24 hours and where the National Weather Service predicts a continuation or deterioration of existing meteorological conditions for the next 24 hours.

(bb) Notices of "no-burn" days for the specified island(s) will be provided on or before 4:00 p.m. by radio broadcast through the National Weather Service and will be applicable for the succeeding day.

(4) Record Keeping and Monitoring:

(aa) Each permittee shall maintain a record of conditions existing at the time of each burn to include the location and identification of burn area, size of area, date and time of day, prevailing wind direction and speed, rainfall in preceeding 24 hours, type of material, and any other pertinent data as required by the Department.

(bb) In recording meteorological data required by the immediately preceding subsection (Section 7(c) (4) (aa)), the permittee may use National Weather Service data or, on his own motion, conduct monitoring of conditions provided that instruments used have been approved by the Department.

(5) Action on Application:

(aa) The Department shall act on an application within a reasonable time, but not to exceed 90 calendar days from the date the application is received and shall notify the applicant in writing of its approval or denial of the application. If the Department has not acted within the 90-calendar day period, the application shall be deemed to have been approved, provided that the Department may request additional information from the applicant and the 90-calendar day period shall commence on the day the supplementary information is received.

(bb) All applications shall be submitted to the Department of Health, 1250 Punchbowl Street, Honolulu, Hawaii 96813.

(cc) If an application is denied, the applicant may request a hearing in accordance with Chapter 91, Hawaii Revised Statutes.

(6) Duration of Permit:

The permit may be granted for a period of up to one year from the date of approval.

(7) Modification, Suspension, or Revocation of Permit:

The Department may, on its own motion or the application of any person, modify, suspend, or revoke a permit if, after affording the applicant a hearing in accordance with Chapter 91, Hawaii Revised Statutes, it determines that, any condition of the permit

has been violated, or any rule or regulation of the Department has been violated, or any provision of Chapter 342, Hawaii Revised Statutes, have been violated, or the maintenance or attainment of a national ambient air quality standard will be interfered with, or that such is in the public interest.

(8) Transfer of Permit:

The permit shall not be transferable, whether by operation of law or otherwise or from one person to another.

(9) Fees:

(aa) Filing Fee.

(1) Every applicant for a permit shall pay a filing fee according to the following schedule:

(aaa) Up to and including 10 acres - $5.00

(bbb) 10 to 100 acres - $20.00

(ccc) Greater than 100 acres - $50.00

The acreage will be the total acreage designated to be burned as specified in the permit.

(2) This filing fee shall be submitted with the application and shall not be refunded or applied to any subsequent application.

(3) Fees shall be made payable to the State of Hawaii.

(bb) Exemptions.

Any federal, state, or county government agency shall be exempt from paying all fees as prescribed herein.

(50.1.2) SECTION 8. VISIBLE EMISSIONS:

(a) Visible emission restrictions for existing stationary sources.

(1) No person shall cause or permit the emission of visible air pollutants of a shade or density equal to or darker than that designated as No. 2 on the Ringelmann Chart or 40 percent opacity, except as provided in Section 8 (a)(2).

(2) A person may discharge into the atmosphere from any single source of emission, for a period or periods aggregating not more than 3 minutes in any 60 minutes, air pollutants of a shade or density not darker than No. 3 on the Ringelmann Chart or 60 percent

opacity when building a new fire or when breakdown of equipment occurs.

(3) Sources in the City and County of Honolulu and County of Maui shall meet the requirements of Section 8(a)(1) immediately upon adoption of the regulations or in accordance with the schedule(s) established under the provisions of Section 6, Compliance Schedule. Sources on all other counties shall meet the requirements of Section 8(a)(1) on June 1, 1973.

(b) Visible emission restrictions for new stationary sources.

(1) No person shall cause or permit the emission of visible air pollutants of a shade or density equal to or darker than that designated as No. 1 on the Ringelmann Chart or 20 percent opacity, except as provided in Section 8(b)(2).

(2) A person may discharge into the atmosphere from any single source of emission, for a period or periods aggregating not more than 3 minutes in any 60 minutes, air pollutants of a shade or density not darker than No. 3 on the Ringelmann Chart or 60 percent opacity when building a new fire or when breakdown of equipment occurs.

(3) The effective date shall be immediately upon adoption of the regulations.

(c) Exceptions for uncombined water. The provisions of this regulation shall not apply to any emission which, except for the presence of uncombined water, such as condensed water vapor, would not be in violation of such provisions.

(12.0) SECTION 9. CONTROL OF MOTOR VEHICLES:

(a) No gasoline-powered motor vehicle shall be operated which emits visible smoke while moving upon streets, roads, and highways.

(b) No diesel-powered motor vehicle shall be operated which emits visible smoke for a period of more than five (5) consecutive seconds while upon streets, roads, and highways.

(c) No person shall cause, suffer or allow to keep any engine in operation while the motor vehicle is stationary at a loading zone, parking or serving area, route terminal or other off-street areas, except:

(1) During adjustment or repairing of such engine at a garage or similar place of repair.

(2) During operation of ready-mix trucks, cranes, hoists, and certain bulk carriers or other auxiliary equipment built onto the vehicle or equipment that require power take-off from the engine,

provided that there is no visible discharge of smoke and the equipment is being used and operated for the purposes as originally designed and intended. This exception does not apply to operations of air conditioning equipment or systems.

(d) No person shall remove, dismantle, fail to maintain or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle as required pursuant to the provisions of the Federal Clean Air Act, as amended, except as permitted or authorized by law.

(e) The effective date shall be immediately upon adoption of the regulations for the City and County of Honolulu and June 1, 1973 for all other counties.

(50.1) SECTION 10. FUGITIVE DUST:

(a) No person shall cause or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be constructed, altered, repaired or demolished without taking reasonable precautions, as approved by the Department, to prevent particulate matter from becoming airborne. Examples of some reasonable precautions are:

(1) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;

(2) Application of asphalt, oil, water or suitable chemicals on roads, materials stockpiles, and other surfaces which can give rise to airborne dusts;

(3) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations;

(4) Covering, at all times when in motion, open-bodied trucks transporting materials likely to give rise to airborne dust;

(5) Conduct of agricultural practices such as tilling of land, application of fertilizers, etc., in such manner as to minimize airborne dust;

(6) The paving of roadways and their maintenance in a clean condition;

(7) The prompt removal of earth or other material from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water, or other means.

(b) No person shall:

(1) cause or permit the discharge of visible emissions of fugitive dust beyond the lot line of the property on which the emissions originate; or

(2) cause or permit to be emitted into the atmosphere any dust from any source in such a manner that the ground level concentrations at a point selected by the Department exceeds:

(aa) 150 micrograms per cubic meter above upwind concentrations. Samples shall be obtained by using a high volume air sampler or other equivalent method for a 12-hour period; or

(bb) A fallout of 3.0 grams of dust per square meter above upwind concentrations for any 14-day period. Dustfall samples shall be obtained by using fallout jars of 8 inches in diameter and 12 inches in depth or any larger jars of equivalent proportions;

provided that this subsection 10(b) shall not apply to persons engaged in agricultural practices or to persons who can demonstrate to the Director that best practical operation or treatment is being implemented.

(c) This regulation shall be effective upon adoption.

(51.9) SECTION 11. INCINERATION:

(a) No person shall cause or permit the emission from any incinerator of particulate matter to exceed 0.20 pounds per 100 pounds (2 gm/kg.) of refuse charged.

(b) Emission tests shall be conducted at a maximum burning capacity of the incinerator.

(c) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate or such other rate as may be determined by the Department in accordance with good engineering practices. In cases of conflict, the determination made by the Department shall govern.

(d) For the purposes of this regulation, the total of the capacities of all furnaces within one system shall be considered as the incinerator capacity.

(e) This regulation shall be in effect immediately for new sources and on June 1, 1973, for existing sources.

(51.5) SECTION 12. FUEL BURNING EQUIPMENT:
BAGASSE-BURNING BOILERS:

(a) No person shall cause or permit the emissions of particulate matter from bagasse-burning boilers in excess of 0.4 lbs./100 lbs. of bagasse as burned.

(b) This regulation shall be in effect immediately for new sources and on December 31, 1973.

(50.1.1) SECTION 13. PROCESS INDUSTRIES:

(a) No person shall cause or permit the emission of particulate matter in any one hour from any source in excess of the amount shown in Table 13-1 for the process weight rate allocated to such source.

(b) Process weight per hour is the total weight of all materials introduced into any specific process that may cause any emission of particulate matter. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. For a cyclical or batch operation, the process weight per hour will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle. For a continuous operation, the process weight per hour will be derived by dividing the process weight for a typical period of time by the number of hours of such period.

(c) Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this regulation, the interpretation that results in the minimum value for allowable emission shall apply.

(d) For purposes of this regulation, a process is any method, reaction, or operation whereby materials introduced into the process undergo physical or chemical change. A specific process, independent or production unit, is one which includes all of the equipment and facilities necessary for the completion of the transformation of the materials to produce a physical or chemical change. There may be several specific processes in series necessary to the manufacture of a product. However, where there are parallel series of specific processes, the similar parallel specific processes shall be considered as a specific process for emission regulation.

(e) This regulation shall be in effect immediately for new sources and on June 1, 1973, for existing sources.

TABLE 13-1

Process Weight Rate Lb./Hr.	Rate of Emission Lb./Hr.
100	0.551
200	0.877
400	1.40
600	1.83
800	2.22
1,000	2.58
1,500	3.38
2,000	4.10
2,500	4.76
3,000	5.38
3,500	5.96
4,000	6.52
5,000	7.58
6,000	8.56
7,000	9.49
8,000	10.4
9,000	11.2
12,000	13.6
16,000	16.5
18,000	17.9
20,000	19.2
30,000	25.2
40,000	30.5
50,000	35.4
60,000 or more	40.0

Interpolation of the data in this table for process weight rates up to 60,000 lb./hr. shall be accompanied by use of the equation $E = 4.10\ p^{0.67}$. E = rate of emission in lb./hr. and P = Process weight rate in tons/hr.

(51.6) SECTION 14. SULFUR OXIDES FROM FUEL COMBUSTION:

(a) No person shall burn, sell, or make available for sale for burning in fuel burning equipment, any fuel containing in excess of 2.0 percent sulfur by weight except for fuel used in ocean-going vessels.

(b) No person operating fossil-fuel fired power and steam generating facilities having a power generating output in excess of 25 megawatts or a heat input greater than 250 BTU/hr. shall burn fuel containing in excess of 0.5 percent sulfur by weight.

(c) The sale and use of fuels prohibited by (a) and (b) above may be allowed when the Department has determined that the use of such other fuels will not violate the ambient air quality standards for oxides of sulfur.

(d) This regulation shall be in effect on June 1, 1974.

(51.16) SECTION 15. STORAGE OF VOLATILE ORGANIC COMPOUNDS:

(a) No person shall place, store, or hold in any stationary tank, reservoir or other container of more than 40,000 gallon (150,000 liter) capacity any volatile organic compound unless such tank, reservoir, or other container is a pressure tank capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is designed, and equipped, with one of the following vapor loss control devices:

(1) A floating roof, consisting of a pontoon type, double deck type roof or internal floating cover, which will rest on the surface of the liquid contents and be equipped with a closure seal or seals to close the space between the roof edge and tank well. This control equipment shall not be permitted if the volatile organic compounds have a vapor pressure of 11.0 pounds per square inch absolute (568 mm Hg.) or greater under actual storage conditions. All tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place.

(2) A vapor recovery system, consisting of a vapor gathering system capable of collecting the volatile organic compounds vapors and gases discharged, and a vapor disposal system capable of processing such volatile organic vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(3) Other equipment or means of equal efficiency for purposes of air pollution control as may be approved by the Department.

(b) No person shall place, store, or hold in any new stationary storage vessel of more than 250-gallon (950 liter) capacity any volatile organic compound unless such vessel is equipped with a permanent submerged fill pipe or is a pressure tank as described above in (a) or is fitted with a vapor recovery system as described in (a) (2) above.

(c) This regulation shall be in effect immediately for new sources and on January 1, 1975, for existing sources.

(51.16) SECTION 16. VOLATILE ORGANIC COMPOUND WATER SEPARATION:

(a) No person shall use any compartment of any single or multiple compartment volatile organic compound water separator which receives effluent water containing 200 gallons (760 liters) a day or more of any volatile organic compound from any equipment processing, refining, treating, storing, or handling volatile organic compounds consisting of kerosene or more volatile organic materials unless such compartment is equipped with one of the following vapor loss control devices, properly installed, in good working order, and in operation:

(1) A container having all openings sealed and totally enclosing the liquid contents. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(2) A container equipped with a floating roof, consisting of a pontoon type, double deck type roof, or internal floating cover, which will rest on the surface of the contents and be equipped with a closure seal or seals to close the space between the roof edge and container wall. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(3) A container equipped with a vapor recovery system consisting of a vapor gathering system capable of collecting the organic vapors and gases discharged and a vapor disposal system capable of processing such organic vapors and gases so as to prevent their emission to the atmosphere and with all container gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(4) A container having other equipment of equal efficiency for purposes of air pollution control as may be approved by the Department.

(b) This regulation shall be in effect immediately for new sources and on January 1, 1975, for existing sources.

(51.16) SECTION 17. PUMPS AND COMPRESSORS:

(a) All pumps and compressors handling volatile organic compounds shall have mechanical seals or other equipment of equal efficiency for purposes of air pollution control as may be approved by the Department.

(b) This regulation shall be in effect immediately for new sources and on January 1, 1975, for existing sources.

(51.16) SECTION 18. WASTE GAS DISPOSAL:

(a) No person shall cause or permit the emission of organic gases from a vapor blowdown system or emergency relief unless these gases are burned by smokeless flares, or an equally effective control device as approved by the Department.

(b) This regulation shall be in effect immediately for new sources and on January 1, 1975, for existing sources.

(8.0) SECTION 19. PREVENTION OF AIR POLLUTION EMERGENCY EPISODES

(a) Notwithstanding any other provision of the air pollution control regulations, this episode regulation is designed to prevent the excessive buildup of air contaminants during air pollution episodes, thereby preventing the occurrency of an emergency due to the effects of these contaminants on the public health.

(b) Episode Criteria.

Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the Director determines that the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a threat to the health of the public. In making this determination, the Director will be guided by the following criteria:

(1) "AIR POLLUTION FORECAST": An internal watch by the Department shall be actuated by a National Weather Service advisory that Atmospheric Stagnation Advisory is in effect or the equivalent local forecast of stagnant atmospheric conditions.

(2) "ALERT": The Alert level is that concentration of pollutants at which first stage control action is to begin. An Alert will be declared when <u>any one</u> of the following levels is reached:

SO_2--800 ug/m^3 (0.3 ppm) 24-hour average;
Particulate matter--3.0 COH's or 375 ug/m^3, 24-hour averages;
SO_2 and Particulate matter combined--product of SO_2, ppm, 24-hour average and COH's equal to 0.2 or product of SO_2, ug/m^3, 24-hour average and particulate matter, ug/m^3, 24-hour average equal to 65×10^3;
CO--17 mg/m^3 (15 ppm) 8-hour average;
Oxidant--200 ug/m^3 (0.1 ppm) 1-hour average;
NO_2--1130 ug/m^3 (0.6 ppm) 1-hour average 282 ug/m^3 (0.15 ppm) 24-hour average;
and meteorological conditions are such that this condition can be expected to continue for twelve (12) or more hours.

(3) "WARNING": The Warning level indicates that air quality is continuing to degrade and that additional abatement actions are necessary. A Warning will be declared when any one of the following levels is reached:

SO_2 --1,600 ug/m^3 (0.6 ppm) 24-hour average;
Particulate matter--5.0 COH's or 625 ug/m^3, 24-hour averages;
SO_2 and Particulate matter combined--product of SO_2, ppm, 24-hour average and COH's equal to 0.8 or product of SO_2 ug/m^3 24-hour average and particulate matter, ug/m^3, 24-hour average equal to 261×10^3;
CO--34 mg/m^3 (30 ppm) 8-hour average;
Oxidant--800 ug/m^3 (0.4 ppm) 1-hour average;
NO_2--2,260 ug/m^3 (1.2 ppm) 1-hour average
565 ug/m^3 (0.3 ppm) 24-hour average;

and meteorological conditions are such that this condition can be expected to continue for twelve (12) or more hours.

(4) "EMERGENCY": The Emergency level is reached when the Warning level for a pollutant has been exceeded and (1) the concentrations of the pollutant are continuing to increase, or (2) the Director determines that, because of meteorological or other factors, the concentrations will continue to increase.

SO_2 --2,100 ug/m^3 (0.8 ppm) 24-hour average;
Particulate matter--7.0 COH's or 875 ug/m^3, 24-hour averages;
SO_2 and Particulate matter combined--product of SO_2, ppm, 24-hour average and COH's equal to 1.2 or product of SO_2, ug/m^3, 24-hour average and particulate matter, ug/m^3, 24-hour average equal to 393×10^3;
CO--46 ug/m^3 (40 ppm) 8-hour average;
Oxidant--1,200 ug/m^3 (0.6 ppm) 1-hour average;
NO_2--3,000 ug/m^3 (1.6 ppm) 1-hour average; 750 ug/m^3 (0.4 ppm) 24-hour average;

(5) "TERMINATION": Once declared, any status reached by application of these criteria will remain in effect until the criteria for that level are no longer met. At such time, the next lower status will be assumed.

(5.0) SECTION 20. VARIANCES: shall be amended to read as follows:

(a) Every application for a variance shall be made on forms furnished by the Department and shall be accomplished by a complete and detailed description of present conditions, how present conditions do not conform to standards, and such other information as the Department may prescribe by rules or regulations.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the Department, and the effect or probable effect upon the air quality standards established pursuant to this chapter.

(c) Whenever an application is approved, the Department shall issue a variance authorizing the emission in excess of applicable standards. Approval of a variance shall be made only after a public hearing is held by the Department in the county where the source is situated. No variance shall be granted by the Department unless the application and the supporting information clearly show that:

(1) The continuation of the function or operation involved in the emissions by the granting of the variance is in the public interest;

(2) The emission occurring or proposed to occur does not substantially endanger human health or safety; and

(3) Compliance with the rules, regulations, or standards from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitation:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control or abatement of the emission involved, it shall be only until the necessary means for prevention, control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the Department may prescribe. No renewal of variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the emission involved.

(2) The Director may issue a variance for a period not exceeding ten years.

(3) Every variance granted under this section shall include conditions requiring the grantee to perform air sampling and report the results of such sampling to the Department.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding ten years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided, further, that

the renewal, and the variance issued in pursuance thereof, shall provide for emission not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance.

(f) No variance shall be granted unless the Department finds that human health and safety will not be endangered thereby and that the attainment or maintenance of a National Ambient Air Quality Standard will not be prevented or interfered with.

(g) No variance granted pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

(15.0) SECTION 21. PENALTIES: shall be amended to read as follows:

Any person who violates the provisions of this Chapter shall be liable for a penalty in a manner and amount as provided in Act 100, Session Laws of Hawaii, 1972.

(16.0) SECTION 22. HEARINGS AND APPEALS: shall be amended to read as follows:

Hearings before the Department shall be held and appeals from any of its decisions for any violation of these regulations shall be made in accordance with Act 100, Session Laws of Hawaii, 1972.

(3.0) SECTION 23. APPLICATION:

The provisions of this Chapter shall apply to the State of Hawaii, except where designated.

(2.0) SECTION 24. UNCONSTITUTIONALITY CLAUSE:

Should any section, paragraph, sentence, clause, phrase or application of this Chapter be declared unconstitutional or invalid for any reason by competent authority, the remainder or any other application of said Chapter shall not be affected thereby.

(2.0) SECTION 25. DATE OF EFFECT:

This Chapter shall be effective 60 days from the date of its adoption by the Department of Health, State of Hawaii.

FEDERALLY PROMULGATED

REGULATIONS

(14.0) 52.624 REGULATION FOR PUBLIC AVAILABILITY OF EMISSION DATA

(b) Regulation for public availability of emission data.

(1) Any person who cannot obtain emission data from the Agency responsible for making emission data available to the public, as specified in the applicable plan, concerning emissions from any source subject to emission limitations which are part of the approved plan may request that the appropriate Regional Administrator obtain and make public such data. Within 30 days after receipt of any such written request, the Regional Administrator shall require the owner or operator of any such source to submit information within 30 days on the nature and amounts of emissions from such source and any other information as may be deemed necessary by the Regional Administrator to determine whether such source is in compliance with applicable emission limitations or other control measures that are part of the applicable plan.

(2) Commencing after the initial notification by the Regional Administrator pursuant to paragraph (b)(1) of the section, the owner or operator of the source shall maintain records of the nature and amounts of emissions from such source and any other information as may be deemed necessary by the Regional Administrator to determine whether such source is in compliance with applicable emission limitations or other control measures that are part of the plan. The information recorded shall be summarized and reported to the Regional Administrator, on forms furnished by the Regional Administrator, and shall be submitted within 45 days after the end of the reporting period. Reporting periods are January 1-June 30; and July 1-December 31.

(3) Information recorded by the owner or operator and copies of this summarizing report submitted to the Regional Administrator shall be retained by the owner or operator for 2 years after the date on which the pertinent report is submitted.

(4) Emission data obtained from owners or operators of stationary sources will be correlated with applicable emission limitations and other control measures that are part of the applicable plan and will be available at the appropriate regional office and at other locations in the state designated by the Regional Administrator.

(10.0) 52.629 Review of New or Modified Indirect Sources

(b) Regulation for Review of New or Modified Indirect Sources

(1) All terms used in this paragraph but not specifically defined below shall have the meaning given them in 52.01 of this chapter.

(i) The term "indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a national standard. Such indirect sources include, but are not limited to:

(a) Highways and roads.

(b) Parking facilities.

(c) Retail, commercial and industrial facilities.

(d) Recreation, amusement, sports and entertainment facilities.

(e) Airports.

(f) Office and Government buildings.

(g) Apartment and condominium buildings.

(h) Education facilities.

(ii) The term "Administrator" means the Administrator of the Environmental Protection Agency or his designated agent.

(iii) The term "associated parking area" means a parking facility or facilities owned and/or operated in conjunction with an indirect source.

(iv) The term "aircraft operation" means an aircraft take-off or landing.

(v) The phrase "to commence construction" means to engage in a continuous program of on-site construction including site clearance, grading, dredging, or land filling specifically designed for an indirect source in preparation for the fabrication, erection, or installation of the building components of the indirect source. For the purpose of this paragraph, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be disregarded in determining whether a construction or modification program is continuous.

(vi) The phrase "to commence modification" means to engage in a continuous program of on-site modification, including site clearance, grading, dredging, or land filling in preparation for specific modification of the indirect source.

(vii) The term "highway section" means the development proposal of a highway of substantial length between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study or multi-year highway improvement program as set forth in 23 CFR 770.201 (38 FR 31677).

(viii) The term "highway project" means all or a portion of a highway section which would result in a specific construction contract.

(ix) The term "Standard Metropolitan Statistical Area (SMSA)" means such areas as designated by the U.S. Bureau of the Budget in the following publication: "Standard Metropolitan Statistical Area," issued in 1967, with subsequent amendments.

(2) The requirements of this paragraph are applicable to the following:

(i) In an SMSA:

(a) Any new parking facility or other new indirect source with an associated parking area, which has a new parking capacity of 1,000 cars or more; or

(b) Any modified parking facility, or any modification of an associated parking area, which increases parking capacity by 500 cars or more; or

(c) Any new highway project with an anticipated average annual daily traffic volume of 20,000 or more vehicles per day within ten years of construction; or

(d) Any modified highway project which will increase average annual daily traffic volume by 10,000 or more vehicles per day within ten years after modification.

(ii) Outside an SMSA:

(a) Any new parking facility, or other new indirect source with an associated parking area, which has a parking capacity of 2,000 cars or more; or

(b) Any modified parking facility, or any modification of an associated parking area, which increases parking capacity by 1,000 cars or more.

(iii) Any airport, the construction or general modification program of which is expected to result in the following activity within ten years of construction or modification:

(a) New airport: 50,000 or more operations per year by regularly scheduled air carriers, or use by 1,600,000 or more passengers per year.

(b) Modified airport: Increase of 50,000 or more operations per year by regularly scheduled air carriers over the existing volume of operations, or increase of 1,600,000 or more passengers per year.

(iv) Where an indirect source is constructed or modified in increments which individually are not subject to review under this paragraph, and which are not part of a program of construction or modification in planned incremental phases approved by the Administrator, all such increments commenced after December 31, 1974, or after the latest approval hereunder, whichever date is most recent, shall be added together for determining the applicability of this paragraph.

(3) No owner or operator of an indirect source subject to this paragraph shall commence construction or modification of such source after December 31, 1974, without first obtaining approval from the Administrator. Application for approval to construct or modify shall be by means prescribed by the Administrator, and shall include a copy of any draft or final environmental impact statement which has been prepared pursuant to the National Environmental Policy Act (42 U.S.C. 4321). If not included in such environmental impact statement, the Administrator may request the following information:

(i) For all indirect sources subject to this paragraph, other than highway projects:

(a) The name and address of the applicant.

(b) A map showing the location of the site of indirect source and the topography of the area.

(c) A description of the proposed use of the site, including the normal hours of operation of the facility, and the general types of activities to be operated therein.

(d) A site plan showing the location of associated parking areas, points of motor vehicle ingress and egress to and from the site and its associated parking areas, and the location and height of buildings on the site.

(e) An identification of the principal roads, highways, and intersections that will be used by motor vehicles moving to or from the indirect source.

(f) An estimate, as of the first year after the date the indirect source will be substantially complete and operational, of the average daily traffic volumes, maximum traffic volumes for one-hour and eight-hour periods, and vehicle capacities of the principal roads, highways, and intersections identified pursuant to subdivision (i) (e) of this subparagraph located within one-fourth mile of all boundaries of the site.

(g) Availability of existing and projected mass transit to service the site.

(h) Where approval is sought for indirect sources to be constructed in incremental phases, the information required by this subparagraph (3) shall be submitted for each phase of the construction project.

(i) Any additional information or documentation that the Administrator deems necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data at the proposed site prior to construction or modification.

(ii) For airports:

(a) An estimate of the average number and maximum number of aircraft operations per day by type of aircraft during the first, fifth and tenth years after the date of expected completion.

(b) A description of the commercial, industrial, residential and other development that the applicant expects will occur within three miles of the perimeter of the airport within the first five and the first ten years after the date of expected completion.

(c) Expected passenger loadings at the airport.

(d) The information required under subdivisions (i) (a) through (i) of this subparagraph.

(iii) For highway projects:

(a) A description of the average and maximum traffic volumes for one, eight, and 24-hour time periods expected within 10 years of date of expected completion.

(b) An estimate of vehicle speeds for average and maximum traffic volume conditions and the vehicle capacity of the highway project.

(c) A map showing the location of the highway project, including the location of buildings along the right-of-way.

(d) A description of the general features of the highway project and associated right-of-way, including the approximate height of buildings adjacent to the highway.

(e) Any additional information or documentation that the Administrator deems necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data at the proposed site prior to construction or modification.

(iv) For indirect sources other than airports and those highway projects subject to the provisions of paragraph (b) (6) (iii) of this section, the air quality monitoring requirements of paragraph (b) (3) (i) (i) of this section shall be limited to carbon monoxide, and shall be conducted for a period of not more than 14 days.

(4) (i) For indirect sources other than highway projects and airports, the Administrator shall not approve an application to construct or modify if he determines that the indirect source will:

(a) Cause a violation of the control strategy of any applicable state implementation plan; or

(b) Cause or exacerbate a violation of the national standards for carbon monoxide in any region or portion thereof.

(ii) The Administrator shall make the determination pursuant to paragraph (b) (4) (i) (b) of this section by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected to be attracted by the indirect source. Such determination may be made by using traffic flow characteristic guidelines

published by the Environmental Protection Agency which relate traffic demand and capacity considerations to ambient carbon monoxide impact, by use of appropriate atmospheric diffusion models (examples of which are referenced in Appendix O to Part 51 of this chapter), and/or by any other reliable analytic method. The applicant may (but need not) submit with his application, the results of an appropriate diffusion model and/or any other reliable analytic method, along with the technical data and information supporting such results. Any such results and supporting data submitted by the applicant shall be considered by the Administrator in making his determination pursuant to paragraph (b) (4) (i) (b) of this section.

(5) (i) For airports subject to this paragraph, the Administrator shall base his decision on the approval or disapproval of an application on the considerations to be published as an Appendix to this Part.

(ii) For highway projects and parking facilities specified under paragraph (b) (2) of this section which are associated with airports, the requirements and procedures specified in paragraphs (b) (4) and (6) (i) and (ii) of this section shall be met.

(6) (i) For all highway projects subject to this paragraph, the Administrator shall not approve an application to construct or modify if he determines that the indirect source will:

(a) Cause a violation of the control strategy of any applicable state implementation plan; or

(b) Cause or exacerbate a violation of the national standards for carbon monoxide in any region or portion thereof.

(ii) The determination pursuant to paragraph (b) (6) (i) (b) of this section shall be made by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected on the highway for the ten year period following the expected date of completion according to the procedures specified in paragraph (b) (4) (ii) of this section.

(iii) For new highway projects subject to this paragraph with an anticipated average daily traffic volume of 50,000 or more vehicles within ten years of construction, or modifications to highway projects subject to this paragraph which will increase average daily traffic volume by 25,000

or more vehicles within ten years after modification, the Administrator's decision on the approval or disapproval of an application shall be based on the considerations to be published as an Appendix to this Part in addition to the requirements of paragraph (b) (6) (i) of this section.

(7) The determination of the air quality impact of a proposed indirect source "at reasonable receptor or exposure sites", shall mean such locations where people might reasonably be exposed for time periods consistent with the national ambient air quality standards for the pollutants specified for analysis pursuant to this paragraph.

(8) (i) Within 20 days after receipt of an application or addition thereto, the Administrator shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (b) (8) (ii) of this section shall be the date on which all required information is received by the Administrator.

(ii) Within 30 days after receipt of a complete application, the Administrator shall:

(a) Make a preliminary determination whether the indirect source should be approved, approved with conditions in accordance with paragraphs (b) (9) or (10) of this section, or disapproved.

(b) Make available in at least one location in each region in which the proposed indirect source would be constructed, a copy of all materials submitted by the owner or operator, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(c) Notify the public, by prominent advertisement in a newspaper of general circulation in each region in which the proposed indirect source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the indirect source.

(iii) A copy of the notice required pursuant to this subparagraph shall be sent to the applicant and to officials and agencies having cognizance over the location where the indirect source will be situated, as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional

land use planning agency; and for highways, any local board or committee charged with responsibility for activities in the conduct of the urban transportation planning process (3-C process) pursuant to 23 U.S.C. 134.

(iv) Public comments submitted in writing within 30 days after the date such information is made available shall be considered by the Administrator in making his final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Administrator shall consider the applicant's response in making his final decision. All comments shall be made available for public inspection in at least one location in the region in which the indirect source would be located.

(v) The Administrator shall take final action on an application within 30 days after the close of the public comment period. The Administrator shall notify the applicant in writing of his approval, conditional approval, or denial of the application, and shall set forth his reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location in the region in which the indirect source would be located.

(vi) The Administrator may extend each of the time periods specified in paragraphs (b) (8) (ii), (iv), or (v) of this section by no more than 30 days, or such other period as agreed to by the applicant and the Administrator.

(9) (i) Whenever an indirect source as proposed by an owner or operator's application would not be permitted to be constructed for failure to meet the tests set forth pursuant to paragraphs (b) (4) (i), (b) (5) (i), or (b) (6) (i) and (iii) of this section, the Administrator may impose reasonable conditions on an approval related to the air quality aspects of the proposed indirect source so that such source, if constructed or modified in accordance with such conditions, could meet the tests set forth pursuant to paragraphs (b) (4) (i), (b) (5) (i), or (b) (6) (i) and (iii) of this section. Such conditions may include, but not be limited to:

(a) Binding commitments to roadway improvements or additional mass transit facilities to serve the indirect source secured by the owner or operator from governmental agencies having jurisdiction thereof;

(b) Binding commitments by the owner or operator to specific programs for mass transit incentives for employees and patrons of the source; and

(c) Binding commitments by the owner or operator to construct, modify, or operate the indirect source in such a manner as may be necessary to achieve the traffic flow characteristics published by the Environmental Protection Agency pursuant to paragraph (b) (4) (ii) of this section.

(ii) The Administrator may specify that any items of information provided in an application for approval related to the operation of an indirect source which may affect the source's air quality impact shall be considered permit conditions.

(10) Notwithstanding the provisions relating to modified indirect sources contained in paragraph (b) (2) of this section, the Administrator may condition any approval by reducing the extent to which the indirect source may be further modified without resubmission for approval under this paragraph.

(11) Any owner or operator who fails to construct an indirect source in accordance with the application as approved by the Administrator; any owner or operator who fails to construct and operate an indirect source in accordance with conditions imposed by the Administrator under paragraph (b) (9) of this section; any owner or operator who modifies an indirect source in violation of conditions imposed by the Administrator under paragraph (b) (10) of this section; or any owner or operator of an indirect source subject to this paragraph who commences construction or modification thereof after December 31, 1974, without applying for and receiving approval hereunder, shall be subject to the penalties specified under section 113 of the Act and shall be considered in violation of an emission standard or limitation under section 304 of the Act. Subsequent modification to an approved indirect source may be made without applying for permission pursuant to this paragraph only where such modification would not violate any condition imposed pursuant to paragraphs (b) (9) and (10) of this section and would not be subject to the modification criteria set forth in paragraph (b) (2) of this section.

(12) Approval to construct or modify shall become invalid if construction or modification is not commenced within 24 months after receipt of such approval. The Administrator may extend such time period upon satisfactory showing that an extension is justified. The applicant may apply for such an extension at the time of initial application or at any time thereafter.

(13) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State implementation plan.

(14) Where the Administrator delegates the responsibility for implementing the procedures for conducting indirect source review pursuant to this paragraph to any agency, other than a regional office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the agency designated is not an air pollution control agency, such agency shall consult the appropriate State or local air pollution control agency prior to making any determination required by paragraphs (b) (4), (5), or (6) of this section. Similarly, where the agency designated does not have continuing responsibilities for land use planning, such agency shall consult with the appropriate State or local land use and transportation planning agency prior to making any determination required by paragraph (b) (9) of this section.

(ii) The Administrator of the Environmental Protection Agency shall conduct the indirect source review pursuant to this paragraph for any indirect source owned or operated by the United States Government.

(iii) A copy of the notice required pursuant to paragraph (b) (8) (ii) (c) of this section shall be sent to the Administrator through the appropriate Regional Office.

(15) In any area in which a "management of parking supply" regulation which has been promulgated by the Administrator is in effect, indirect sources which are subject to review under the terms of such a regulation shall not be required to seek review under this paragraph but instead shall be required to seek review pursuant to such management of parking supply regulation. For purposes of this paragraph, a "management of parking supply" regulation shall be any regulation promulgated by the Administrator as part of a transportation control plan pursuant to the Clean Air Act which requires that any new or modified facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(16) Notwithstanding any of the foregoing provisions to the contrary, the operation of this paragraph is hereby suspended pending further notice. No facility which commences construction prior to the expiration of the sixth month after the operation of this paragraph is reinstated (as to that type of facility) shall be subject to this paragraph.

(37 FR 10846, May 31, 1972 as amended at 40 FR 28065, July 3, 1975; 40 FR 40160, Sept. 2, 1975)

(17.0) 52.632 Prevention of Significant Deterioration

(b) Definitions. For the purposes of this section:

(1) "Facility" means an identifiable piece of process equipment. A stationary source is composed of one or more pollutant-emitting facilities.

(2) The phrase "Administrator" means the Administrator of the Environmental Protection Agency or his designated representative.

(3) The phrase "Federal Land Manager" means the head, or his designated representative, of any Department or Agency of the Federal Government which administers federally-owned land, including public domain lands.

(4) The phrase "Indian Reservation" means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(5) The phrase "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(6) "Construction" means fabrication, erection or installation of a stationary source.

(7) "Commenced" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(c) Area designation and deterioration increment

(1) The provisions of this paragraph have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part. Where this paragraph is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. The provisions of this paragraph do not apply in those counties or other functionally equivalent areas that pervasively exceeded any national ambient air quality standards during 1974 for sulfur dioxide or particulate matter and then only with respect to such pollutants. States may notify the Administrator at any time of those areas which exceeded the national standards during 1974 and therefore are exempt from the requirements of this paragraph.

(2) (i) For purposes of this paragraph, areas designated as Class I or II shall be limited to the following increases in pollutant concentration occurring since January 1, 1975:

Pollutant	Area Designations: Class I ($\mu g/m^3$)	Area Designations: Class II ($\mu g/m^3$)
Particulate matter:		
Annual geometric mean	5	10
24-hr maximum	10	30
Sulfur dioxide:		
Annual arithmetic mean	2	15
24-hr maximum	5	100
3-hr maximum	25	700

(ii) For purposes of this paragraph, areas designated as Class III shall be limited to concentrations of particulate matter and sulfur dioxide no greater than the national ambient air quality standards.

(iii) The air quality impact of sources granted approval to construct or modify prior to January 1, 1975 (pursuant to the approved new source review procedures in the plan) but not yet operating prior to January 1, 1975, shall not be counted against the air quality increments specified in paragraph (c) (2) (i) of this section.

(3) (i) All areas are designated Class II as of the effective date of this paragraph. Redesignation may be proposed by the respective States, Federal Land Manager, or Indian Governing Bodies, as provided below, subject to approval by the Administrator.

(ii) The State may submit to the Administrator a proposal to redesignate areas of the State Class I, Class II, or Class III, provided that:

(a) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with procedures established in 51.4 of this chapter, and

(b) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation are notified at least 30 days prior to the public hearing, and

(c) A discussion of the reasons for the proposed redesignation is available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion, and

(d) The proposed redesignation is based on the record of the State's hearing, which must reflect the basis for the proposed redesignation, including consideration of (1) growth anticipated in the area, (2) the social, environmental, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and States, and (3) any impacts of such proposed redesignation upon regional or national interests.

(e) The redesignation is proposed after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

(iii) Except as provided in paragraph (c) (3) (iv) of this section, a State in which lands owned by the Federal Government are located may submit to the Administrator a proposal to redesignate such lands Class I, Class II, or Class III in accordance with subdivision (ii) of this subparagraph provided that:

(a) The redesignation is consistent with adjacent State and privately owned land, and

(b) Such redesignation is proposed after consultation with the Federal Land Manager.

(iv) Notwithstanding subdivision (iii) of this subparagraph, the Federal Land Manager may submit to the Administrator a proposal to redesignate any Federal lands to a more restrictive designation than would otherwise be applicable provided that:

(a) The Federal Land Manager follows procedures equivalent to those required of States under paragraph (c) (3) (ii) and,

(b) Such redesignation is proposed after consultation with the State(s) in which the Federal Land is located or which border the Federal Land.

(v) Nothing in this section is intended to convey authority to the States over Indian Reservations where States have not assumed such authority under other laws nor is it intended to deny jurisdiction which States have assumed

under other laws. Where a State has not assumed jurisdiction over an Indian Reservation the appropriate Indian Governing Body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III, provided that:

(a) The Indian Governing Body follows procedures equivalent to those required of States under paragraph (c) (3) (ii) and,

(b) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located or which border the Indian Reservation and, for those lands held in trust, with the approval of the Secretary of the Interior.

(vi) The Administrator shall approve, within 90 days, any redesignation proposed pursuant to this subparagraph as follows:

(a) Any redesignation proposed pursuant to subdivisions (ii) and (iii) of this subparagraph shall be approved unless the Administrator determines (1) that the requirements of subdivisions (ii) and (iii) of this subparagraph have not been complied with, (2) that the State has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph, or (3) that the State has not requested and received delegation of responsibility for carrying out the new source review requirements of paragraphs (d) and (e) of this section.

(b) Any redesignation proposed pursuant to subdivision (iv) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (iv) of this subparagraph have not been complied with, or (2) that the Federal Land Manager has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph.

(c) Any redesignation submitted pursuant to subdivision (v) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (v) of this subparagraph have not been complied with, or (2) that the Indian Governing Body has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph.

(d) Any redesignation proposed pursuant to this paragraph shall be approved only after the Administrator has solicited written comments from affected Federal agencies and Indian Governing Bodies and from the public on the proposal.

(e) Any proposed redesignation protested to the proposing State, Indian Governing Body, or Federal Land Manager and to the Administrator by another State or Indian Governing Body because of the effects upon such protesting State or Indian Reservation shall be approved by the Administrator only if he determines that in his judgment the redesignation appropriately balances considerations of growth anticipated in the area proposed to be redesignated; the social, environmental and economic effects of such redesignation upon the area being redesignated and upon other areas and States; and any impacts upon regional or national interests.

(f) The requirements of paragraph (c) (3) (vi) (a) (3) that a State request and receive delegation of the new source review requirements of this section as a condition to approval of a proposed redesignation, shall include as a minimum receiving the administrative and technical functions of the new source review. The Administrator will carry out any required enforcement action in cases where the State does not have adequate legal authority to initiate such actions. The Administrator may waive the requirements of paragraph (c) (3) (vi) (a) (3) if the State Attorney-General has determined that the State cannot accept delegation of the administrative/technical functions.

(vii) If the Administrator disapproves any proposed area designation under this subparagraph, the State, Federal Land Manager or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator or reconsidering any area designation determined by the Administrator to be arbitrary and capricious.

(d) Review of new sources

(1) The provisions of this paragraph have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part. Where this paragraph is so incorporated, the requirements of this paragraph apply to any new or modified stationary source of the type identified below which has not commenced construction or modification prior to June 1, 1975 except as specifically provided below. A

source which is modified, but does not increase the amount of sulfur oxides or particulate matter emitted, or is modified to utilize an alternative fuel, or higher sulfur content fuel, shall not be subject to this paragraph.

(i) Fossil-Fuel Steam Electric Plants of more than 1000 million B.T.U. per hour heat input.

(ii) Coal Cleaning Plants.

(iii) Kraft Pulp Mills.

(iv) Portland Cement Plants.

(v) Primary Zinc Smelters.

(vi) Iron and Steel Mills.

(vii) Primary Aluminum Ore Reduction Plants.

(viii) Primary Copper Smelters.

(ix) Municipal Incinerators capable of charging more than 250 tons of refuse per 24 hour day.

(x) Sulfuric Acid Plants.

(xi) Petroleum Refineries.

(xii) Lime Plants.

(xiii) Phosphate Rock Processing Plants.

(xiv) By-Product Coke Oven Batteries.

(xv) Sulfur Recovery Plants.

(xvi) Carbon Black Plants (furnace process).

(xvii) Primary Lead Smelters.

(xviii) Fuel Conversion Plants.

(xix) Ferroalloy production facilities commencing construction after October 5, 1975.

(2) No owner or operator shall commence construction or modification of a source subject to this paragraph unless the Administrator determines that, on the basis of information submitted pursuant to subparagraph (3) of this paragraph:

(i) The effect on air quality concentration of the source or modified source, in conjunction with the effects of growth and reduction in emissions after January 1, 1975, of other sources in the area affected by the proposed source, will not violate the air quality increments applicable in the area where the source will be located nor the air quality increments applicable in any other areas. The analysis of emissions growth and reduction after January 1, 1975, of other sources in the areas affected by the proposed source shall include all new and modified sources granted approval to construct pursuant to this paragraph; reduction in emissions from existing sources which contributed to air quality during all or part of 1974; and general commercial, residential, industrial, and other sources of emissions growth not exempted by paragraph (c) (2) (111) of this section which has occurred since January 1, 1975.

(ii) The new or modified source will meet an emission limit, to be specified by the Administrator as a condition to approval, which represents that level of emission reduction which would be achieved by the application of best available control technology, as defined in 52.01 (f), for particulate matter and sulfur dioxide. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, he may instead prescribe a design or equipment standard requiring the application of best available control technology. Such standard shall to the degree possible set forth the emission reductions achievable by implementation of such design or equipment, and shall provide for compliance by means which achieve equivalent results.

(iii) With respect to modified sources, the requirements of subparagraph (2) (ii) of this paragraph shall be applicable only to the facility or facilities from which emissions are increased.

(3) In making the determinations required by paragraph (d) (2) of this section, the Administrator shall, as a minimum, require the owner or operator of the source subject to this paragraph to submit: site information, plans, description, specifications, and drawings showing the design of the source; information necessary to determine the impact that the construction or modification will have on sulfur dioxide and particulate matter air quality levels; and any other information necessary to determine that best available control technology will be applied. Upon request of the Administrator, the owner or operator of the source shall provide information on the nature and extent of general commercial, residential, industrial, and other growth which has occurred in the area affected by the source's emissions (such area to be specified by the

Administrator) since January 1, 1975.

(4) (i) Where a new or modified source is located on Federal Lands, such source shall be subject to the procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be in addition to applicable procedures conducted by the Federal Land Manager for administration and protection of the affected Federal Lands. Where feasible, the Administrator will coordinate his review and hearings with the Federal Land Manager to avoid duplicate administrative procedures.

(ii) New or modified sources which are located on Indian Reservations shall be subject to procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be administered by the Administrator in cooperation with the Secretary of the Interior with respect to lands over which the State has not assumed jurisdiction under other laws.

(iii) Whenever any new or modified source is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this paragraph shall be coordinated with the broad environmental reviews under that Act, to the maximum extent feasible and reasonable.

(5) Where an owner or operator has applied for permission to construct or modify pursuant to this paragraph and the proposed source would be located in an area which has been proposed for redesignation to a more stringent class (or the State, Indian Governing Body, or Federal Land Manager has announced such consideration), approval shall not be granted until the Administrator has acted on the proposed redesignation.

(e) Procedures for public participation

(1) (i) Within 20 days after receipt of an application to construct, or any addition to such application, the Administrator shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (e) (1) (ii) of this section shall be the date on which all required information is received by the Administrator.

(ii) Within 30 days after receipt of a complete application, the Administrator shall:

(a) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved.

(b) Make available in at least one location in each region in which the proposed source would be constructed, a copy of all materials submitted by the owner or operator, a copy of the Administrator's preliminary determination and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(c) Notify the public, by prominent advertisement in newspaper of general circulation in each region in which the proposed source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the source.

(iii) A copy of the notice required pursuant to this subparagraph shall be sent to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional land use planning agency; and any State, Federal Land Manager or Indian Governing Body whose lands will be significantly affected by the source's emissions.

(iv) Public comments submitted in writing within 30 days after the date such information is made available shall be considered by the Administrator in making his final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Administrator shall consider the applicant's response in making his final decision. All comments shall be made available for public inspection in at least one location in the region in which the source would be located.

(v) The Administrator shall take final action on an application within 30 days after the close of the public comment period. The Administrator shall notify the applicant in writing of his approval, conditional approval, or denial of the application, and shall set forth his reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location in the region in which the source would be located.

(vi) The Administrator may extend each of the time periods specified in paragraph (e) (1) (ii), (iv), or (v) of this section by no more than 30 days or such other period as agreed to by the applicant and the Administrator.

(2) Any owner or operator who constructs, modifies, or operates a stationary source not in accordance with the application, as approved and conditioned by the Administrator, or any owner or operator of a stationary source subject to this paragraph who commences construction or modification after June 1, 1975, without applying for and receiving approval hereunder, shall be subject to enforcement action under section 113 of the Act.

(3) Approval to construct or modify shall become invalid if construction or expansion is not commenced within 18 months after receipt of such approval or if construction is discontinued for a period of 18 months or more. The Administrator may extend such time period upon a satisfactory showing that an extension is justified.

(4) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with the control strategy and all local, State, and Federal regulations which are part of the applicable State Implementation Plan.

(f) Delegation of authority

(1) The Administrator shall have the authority to delegate responsibility for implementing the procedures for conducting source review pursuant to paragraphs (d) and (e), in accordance with subparagraphs (2), (3), and (4) of this paragraph.

(2) Where the Administrator delegates the responsibility for implementing the procedures for conducting source review pursuant to this section to any Agency, other than a regional office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the agency designated is not an air pollution control agency, such agency shall consult with the appropriate State and local air pollution control agency prior to making any determination required by paragraph (d) of this section. Similarly, where the agency designated does not have continuing responsibilities for managing land use, such agency shall consult with the appropriate State and local agency which is primarily responsible for managing land use prior to making any determination required by paragraph (d) of this section.

(ii) A copy of the notice pursuant to paragraph (e) (1) (ii) (c) of this section shall be sent to the Administrator through the appropriate regional office.

(3) In accordance with Executive Order 11752, the Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be delegated, other than to a regional office of the Environmental Protection Agency, for new or modified sources which are owned or operated by the Federal government or for new or modified sources located on Federal lands; except that, with respect to the latter category, where new or modified sources are constructed or operated on Federal lands pursuant to leasing or other Federal agreements, the Federal land Manager may at his discretion, to the extent permissible under applicable statutes and regulations, require the lessee or permittee to be subject to a designated State or local agency's procedures developed pursuant to paragraphs (d) and (e) of this section.

(4) The Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be redelegated, other than to a regional office of the Environmental Protection Agency, for new or modified sources which are located on Indian reservations except where the State has assumed jurisdiction over such land under other laws, in which case the Administrator may delegate his authority to the States in accordance with subparagraphs (2), (3), and (4) of this paragraph.

(39 FR 42514, Dec. 5, 1974; 40 FR 2802, Jan. 16, 1975, as amended at 40 FR 24535, June 9, 1975; 40 FR 25005, June 12, 2975; 40 FR 42012, Sept. 10, 1975)